United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-7305 ORIGINAL

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

Docket No. ~~2156~~ 76-7305

P/S

WILLIAM J. DAVENPORT,
Defendant-Appellant

v.

UNITED MUTUAL LIFE INSURANCE CO.
Plaintiff-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

CASES RELATED TO THIS APPEAL:

DAVENPORT v. BERMAN	SDNY 66 Civ. 4084
DAVENPORT v. ALTMAN, et. el.	SDNY 71 Civ. 4263
DAVENPORT v. AMARO, et. al.	SDNY 74 Civ. 3302
HOUSING AND DEVELOPMENT ADM. OF THE CITY OF N.Y. v. WILLIAM DAVENPORT	SDNY 74 Civ. 5146.

APPELLANT'S BRIEF and INDEX

William J. Davenport,

Defendant-Appellant, Pro-Se

324 Allaire Ave.
Leonia, N.J. 07605
(201) 944 1174.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No. 8156 / 1976 Pro-se

Appellants Brief - Index

Cases Cited

Davenport v. Berman, NYLJ Apr 29, 1966, p.18, col.1(629/66) (Carney, J.) (not otherwise reported) aff'd sub.	6,8,20
Davenport v. Berman, 27 A.D. 2d 903, 280 N.Y.S. 2d 534(1967)	7,
Davenport v. Berman, 420 F.2d 294 (Doc. 34027) SDNY	7,8,11,20,22,-33.
Davenport v. City Rent (70 Civ. 1011) SDNY	7,23
Davenport v. Lindsay (71 Civ. 2205) SDNY	8
Davenport v. Rockefeller (71 Civ 1747) SDNY	8
Davenport v. Altman (71 Civ 4263) SDNY	8,9,11,18,21,-33.
WILLIAMHAM v. BOWLES (U.S. 1943)	8
HDA - NY v. DAVENPORT (NYCC HP135/74)(SDNY 74 Civ. 5146)	9,10, -33.
Davenport v. Amaro (74 Civ 3302) SDNY	10,11 -33.
Davenport v. Grace (75 Civ 889) SDNY	11. -33.
FORBES v. LOMAZOV, N.Y.S. 22 A.D. 2d 800	18
BROOKHART v. JANIS, U.S. (1966)	21
Peopel ex rel N.Y. Central R.Co. v Lindburg, 283 N.Y.	23
Matter of Long Island RR Co. v. Hylan, 240 N.Y. 208	23

A PRIOR STATEMENT.

BEFORE PROCEEDING - This document is an averment , by appellant pro-se and an affidavit. In which, due to continued proceedural complexities advanced by the court systems which exceed appellant's adaquacy as a legal layman, a logic of proceedural presenement is insufficient. Therefore such divergence from standard form as here effected maintain coherence and are utilized.

AFFIDAVIT - I, William J. Davenport, appellant pro-se, the principal and the only completely involved witness, hereto swear the statements of this document to be true to my knowledge or of information believed by me to be true.

' N. B. ' A portion of this appeal involves the judicial behavior of United States Southern Second District Judge Robert Lee Carter, sitting in adjudication in this litigation.

APPELLANT WAS WITNESS by having overheard while sitting in the ante-room to Judge Carter's chambers on (or about) July 10, 1974 at approximately 2:10 PM, Judge Carter's voice, in conversation, behind the closed door leading into his chambers, arranging to "take care of it" "when's the hearing to be held, in three or four months" , "don't worry about it, that's what we'll do, we'll take care of it" . And, appellant also saw and can identify if investigation is made, the tall, slender caucasian male approximately 180 lbs who passed him leaving the chambers at approximately 2:15 pm.

APPELLANT BELIEVES the record of proceedings below, during the year 1975, does indicate or show a similar prior arrangement made and carried out by Judge Carter with some person of appellee's group to pre-determine the litigation outcome, and to pre-direct the hereto involved "reconsideration proceedings" for that purpose and in that manner; and that he the appellant is the victim of judicial criminal malfeasance which seeks to deprive him of his real property with a $23,000.oo judgement. Which is contrary to the judicial preformance and a crime defined under U.S.C. Title 18, Chap 13, Sec. 241.

B JURISDICTION

The instant action, and prior actions hereto in issue by motion to enjoin, are before this court in accordance with the FOURTH amendment, also the first, fifth, sixth, seventh, eighth and fourteenth amendments to the Constitution of these United States; and in accord with provisions of U.S.C. Title 28, Sec's 1331/1332 and Sec's 1343/1443 having been removed as a civil rights denial of the New York State Courts to hear the involved issues as provided by law.

Additional provisions of United States treaties, the New York State Constitution and law which apply are considered moot, jurisdiction having been recognized by the court below, and there being no challenge to be answered.

C THE ISSUES - and QUESTIONS

From confused proceedings the situation which now comes before this court is a mortgage forclosure of appellant's privately owned small apartment house. Which was previously subjected to , contested as illegal , police authority orders of a New York City rent control agency, and as consequence of those orders has been forced by litigation of the (herein) defendants WATTS into fiscal failure and mortgage forclosure.

FURTHER, during the proceedings appellee-laintiff as mortgagee was appointed by the district court as reciever; and for four years neither functioned as reciever nor prosecuted the forclosure resulting in dismissal for failure to prosecute, and dissolution of the lein due to the absence of the funds for which reciever was responsible.

THERETO upon appellee's 'Motion to Reconsider' Judge R.L. Carter of the district court issued new rulings which are grossly and visibly premised upon judicial errors of mis-statement and mis-construction of the record as the basis for reopening proceedings . During these proceedings Judge Carter took an active part, speaking for and prompting appellee's witness and attorney, and also obstructing the presentments of appellant-defendant who was pro se.

The judgementfore-ordained by this judicial conduct in the hearings was issued reversing the prior judgement of Judge Carter without any statement of reason for the reversal as mandatory by law. The judgement ignores appellee's recievership failure and the absent funds to further assign appellee everything asked for including interest on his entire claim for the entire period of litigation - recievership - and delay; including assignment of funds to the defendants WATTS above mentioned who had caused the failure and forclosure, and who had contravened and contradicted the standing order of the court to obtain thos funds during the litigation. All of this is taxed against appellant.

The QUESTIONS therefrom which now arrive before this court are: Whether appellant has recieved DUE PROCESS OF LAW, and whether appellant has recieved FAIR TRIAL. And clear defination of the term and application of "RES JUDICATA".

AT ISSUE (a) remains the "federal question" upon which this litigation was removed to these courts from the New York State Courts, and which the district court refused to recognize or examine in trial. Which stated is:

Appellant in 1957 effected statutory exemption of the subject involved apartment # 1, 575 E. 168 St., Bronx, N.Y. by compliance with the New York State rent control statutes as amended 1954 [Charter 249, Sec 2(2) par (h) - ie:2(2)(h)]. Which exempt status was determined after examination by the "STATE OF NEW YORK TEMPORARY STATE HOUSING RENT COMMISSION". However, in 1963-1964 a replacement rent control agency of The City of New York conducted an administrative action which without known statutory or lawful authority, without cause, without lawful notice, without lawful proceedings including the mandatory hearings, without lawful findings of fact or determinations of law stated, and without known lawful signatory except by rubber stamp, issued "orders" with the overwhelming force of government stating "revocation" of the involved filed "LANDLORD'S NOTICE OF STATUTORY DECONTROL" (Form 42 of SNYTSURC.). Which order stated itself "retroeffective to the date of original filing" of 1957.

Appellant during the intervening twelve years sought administratively and in the courts to contest these orders as unlawful being without cause, without lawful authority, without lawful notice, without lawful proceedings or findings or determinations of the facts and law. Administratively the New York City Rent Administration denied the hearing by ignoring the application, and judicially suborning the courts by averrment of a fraudulent claim of prior administrative proceedings stating supposed findings and facts as resultant from these non-existant proceedings. The courts have dismissed all of appellants applications with the dismissals premised upon this lie of the adverse party. In the instant litigation, Judge Carter similarly acted to deny judicial examination of the claim. (See transcript of trial, pg 52 "That matter has been litigated someplace else".)

THE LAW DOES PROVIDE, as appellant demanded in the district court, and again demands here, that the underlying fraud be examined, the law correctly determined, and the involved judgements be corrected. Appellant submits that his being constrained into these circumstances by unlawful exercise of the POLICE AUTHORITY OF THE STATE OF NEW YORK, he is lawfully not responsible, and the responsible parties should be determined from the records which the court has failed to examine. Present standing judgements are unlawful and unjust.

FURTHER AT ISSUE (b) has developed a need for review of the three conflicting opinions in this litigation of the Hon. R. L. Carter USDJ SDNY; OPINION # 40985 of July 19, 1974, OPINION # 42189 of April 4, 1975, and OPINION # 44084 of March 17, 1976 and JUDGEMENT ORDER # 76, 466 of May 20, 1976.

The first opinion adequately states itself developed upon the facts and the record. The second opinion as a basis for "reconsideration" was demonstrated during the 'Evidentiary Hearing' of April 28, 1975 by plaintiff-appellee's attorney to be premised upon judicial error of mis-statement and mis-construction of the record. And yet, Judge Carter, acting consistently to the maximal convenience of appellee forced appellant into a so-called "Trial" , where absent without comment were all other defendants, where the 'issues' were undefined, where appellant's attempts to present evidence, argument, or to even clarify for understanding the questions supposedly before the court were obstructed by Judge Carter; where Judge Carter not only obstructed and harrassed appellant pro-se from the bench, but also spoke for and prompted appellee's witness into perjury, and prompted appellee's attorney.

At ISSUE is the propriety of these proceedings, appellant charges judicial excess of bias to the extent of deliberate and criminal misfeasance and malfeasance.

D. THE FACTS and HISTORY OF LITIGATION

1. The involvement hereto properly divides into three segments . The first being the situation and legal status of claims prior to forclosure, between 1955 and 1970, covering the rent control legalities or police authority exercised which created the forclosure. This is the "federal question" upon which the litigation was removed to these federal courts. The second segment is the litigation and court orders between 1970 entry and the dismissial OPINION # 40985 of July 19, 1974. And the third segment being the actions of appellee

and the reconsideration proceedings between July 19,1974 including the judicial actions of The Hon. R.L. Carter through the proceedings and including the misdirection of the files and delayed entries of the judicial Opinion # 44084 and Judgement Order # 76,466.

SEGMENT ONE

2. The inception of this situation derives from appellant-defendant-owner-landlord's occupancy exemption statutorily provided New York State Law , amended 1954 Chapter 249 Section 2(2)(h). All of Section 2 (2) provide exemptions, none of which are subject to administrative action. This includes rooms at the YMCA, the Guest House at Governor's Island, buildings constructed after February 1, 1947 , etc. With section 2(2)(h) reading as follows:

> " Housing accommodations which are rented after April 1, 1953, and have been continously occupied by the owner thereof for a period of one year prior to the date of renting; provided, however, that this paragraph shall not apply where the owner acquired possession of the housing accommodation after the issuance of a certificate of eviction under subdivivision two of section five of this act within the two year period immediately preceding the date of such renting, . . ."

3. Appellant-landlord obtain such a Certificate of Eviction, Docket # E-7883 issued July 13, 1955. Appellant-landlord occupied the appartment after the prior tenants departure in August 1955, placing therein his private effects including furniture prior to departure to sea employed as a ship radio officer. Appellant-landlord returned sleeping in the apartment the afternoon-evening of Oct. 5, 1955 and obtained reconnection of services in his name on Oct. 6, 1955.

4. Moot to the issue of this litigation, except explanitory of prior fraudulent comments of the New York City Rent Control attorneys. Appellant's plans were disrupted by rent control refusal to provide lawful rents, and appellant obtained needed funds by continuing life at sea instead of completely ashore. His home residence was Apt. #1, 575 E. 168 St, co-occupied by a roomer, George Gowins.

5. In 1957 apartment #6 in the building was vacated and the law permitting multiple decontrols, appellant-landlord in transferring his residence occupied both apartments for a period of months while he repaired windows, wiring, pluming, floors and walls and painted the new residence. Co-incidentially he agreeded to rent Apt. #1 to George Gowins as it's tenant upon his departure. Although the actual occupancy time at the date of filing was August 1955 thru the filing date of Oct. 15, 1957. On the advise of one Rent Control official as well as the downstairs registration clerk, appellant filled in dates of convenience which met the mandatory requirements of law. Those dates being Oct 6,1955 thru Sept 15,1957. The two year Certificate of Eviction requirement and the One year of occupancy requirement therewith being met of official notice.

6. Between 1957 and 1962 appellant effected statutory decontrol under the same provision of law of four other apartments #6, #5, #2, and #7 respectively in the same building. The issue is part of related litigation.

7. In 1962 administrative control of New York City rents passed from the State Commission to a City agency. The law forbid retro-effective rulings as are here in contest. Such orders could only be initiated by the courts.

8. In 1963 the New York City Rent Control Agency seeking to contravene the provisions of law and administratively effect regulation control opened the

closed and warehoused docket related to Art. # 1, and the other related dockets also closed, of the prior New York State Commission. A sub-rosa administrative action was carried out without cause, proper notice, information of any charges or the lawful questions of concern to appellant-landlord who through his attorney at this time sought to know the cause, the questions of concern, and the issues involved that he might answer in his own defense. Instead his request for hearing or access to records or administrative officials was simply ignored, thus denied. Eventually without lawful or true findings of fact, determinations of law, or documents purporting to state any such findings or determinations, and with only a rubber stamping as the official authorizing signature, on Dec 11, 1964 that agency issued orders " Landlord's Report on Statutory Decontrol DR-3974 is revoked". Rent was stated to be $64.95 per month.

9. The defendants WATTS during this period through their attorney had been informed by the same agency that the order would issue, and in July 1964 had filed suit for triple damages for overcharges of rents above $55.00 per month. In August refusing to pay rent, had first been issued an eviction notice for rent nonpayment. Then a fire occurred in this apartment while occupied by them, causing more than $14,000.00 in damages and loss. The fire was suspected by appellant to be arson, and a personal request was made to the fire marshal's office seeking investigation. The inspector there concurred in the view, but refused investigation as fruitless. The official report states cause to be "probably from tenant's soft wiring" , or extention cords. The prior suit was now dropped and a counterclaim to the eviction substituted.

10. Appellant's attorney of the opinion that without a prior hearing to determine the facts and law on the Rent Control Agency Order, that no defense was possible to the tenants claim. The attorney failed to inform appellant of a scheduled hearing after many postponements, and failed to appear resulting in a default judgement granted defendants-tenants WATTS. An agreement was effected between defendant-tenants WATTS and defendant-landlord DAVENPORT setting aside the judgement pending litigation of the issue.

11. Between 1964 and 1976 appellant entered the below noted litigation seeking examination of the original Rent Control Orders. All of which to date has been denied examination on the false claim , the perjury, the subornation of the courts by agents of that agency claiming original administrative proceedings, findings and facts - ALL OF WHICH ARE ABSENT IN FACT AND OF RECORD. The courts have in every instance including the instant litigation refused to recognize the question, to open the records, or to verify the facts. The same judges have consistently ruled accepting the indicated contumacies as the basis of statements in dismissal.

a. In 1963-64 appellant sought hearing , access to the administrative record and/or officials that he might speak in answer in his own defense and was denied.

b. In 1965 appellant sought administrative review as mandated by agency regulations. The record discloses the fact, delay and denial by simply being ignored. On December 16, 1965, the New York City Rent Control Agency issued it's first and only - after-the-fact - statement as to alledged administrative reasoning. Which "White Paper" is the document of subsequent fraudulent reference by representatives of that agency as the claimed "findings of fact and determinations of law".

c. In 1966 through his attorney, appellant entered an action before

the New York State Supreme Court, along with a motion seeking a Temporary Restraining Order. The New York City Agency cross-moved for dismissal falsely averring to suborn the court, that prior administrative proceedings had disclosed stated findings and determinations and that the court was absent authority to "go behind the back " of the agency in review. The court accepted the contumacious falsehood as it's stated cause for dismissal. The records speak, if examined fully, for themselves. [Matter of Davenport v. Berman, 27 A.D. 2d 903, 280 N.Y.S. 2d 534 (1967)]

The court dismissed the action on false averrments, and has refused to review, and on appeal the appeal court refused to reopen the matter and examine the record. No reason given, the court should note well the inequality of the litigants - citizen davenport vs. GOVERNMENT NEW YORK CITY.

d. In 1968 through his attorney appellant-landlord Davenport entered the action in appeal seeking the absent hearing in the forum of the U.S. Dist. Court, along with a motion seeking a Temporary Restraining Order. unfortunately appellant's attorney sought to use the case as a vehicle to re-argue a prior litigation of his which had been dismissed not adjudicated. The New York City Rent Administration perpetrated it's prior fraud, except that it now claimed the New York State Supreme court dismissal as the determination of law. The instant fraud was premised now upon prior fraud. Judge John Canella USDJ SDNY again paraphrased the fraud to dismiss the action without hearing, simultaneously quashing appellant's subpoena by which he sought access to the administration records in question that he might perfect his comp'aint. Absent the forum, the complaint could not be heard.

This dismissal was appealed and this appeals court stated : only, that appellant had failed to prove his constitutional claim. " gave the court no sufficient basis for determining that .. claim met the jurisdictional minimus . . " (R. Docket No 34027)

e. At this point appellant's funds were absent, and his attorney's in simple english abandoned his litigation. The questions remained and appellant sought to re-institute the action pro se without prior court experience as DAVENPORT v. CITY RENT and REHAB. ADM. et. al. 70 Civ 1011.

An order to Show Cause in which the New York City Rent Administration claimed "Res Judicata" of the prior dismissal was heard before The Hon. Judge McMahon of the district court, who hearing appellant's statement of dismissal requested a written statement from appellant. The return date placed the action before Judge Tenney, who refused to return the action to Judge McMahon for continuation but with a terse prior sub-rosa interest dismissed the claim on the basis of "res judicata" although there had been as yet no hearing anywhere on the merits including before him.

The action was appealed to this court, and dismissed without opinion, and Certiorari of the U.S. Supreme Court was sought and denied.

SEGMENT TWO

f. At this point defendants WATTS had obtained a garnishee of rents without notice to appellant of the application, and without service of the order upon appellant. The fiscal failure induced mortgage foreclosure, which appellant removed to the U.S. District Court seeking examination of the underlying question.

In the foreclosure summons appellee sought appointment of a reciever. Appellant not contesting appellee's rights to the involved funds, entered a concurring motion before the district court seeking assignment of the

garnisheed funds to appellee. The court signed the order Oct. 20. 1970. Appellee was served with a copy of the order, and in conference agreeded that appellant would act as escrowment agent. The agreement was not activated due to appellee's failure to provide written authorization.

Questions hereto are of controling interest to this courts considerations. This court is asked to refer and note well appellee's testimony thereto: In the Evidentiary Hearing May 28, 1975 pg 11 line 13 of the transcript in which agreement is claimed. And page 37 lines 3 thru 18 in which admission is made that no agreement existed because appellee withheld the authorizing letter.

Further the testimony of record by appellee is that he failed to take action necessary to obtain the garnisheed funds, but at some point agreeded to it's being obtained and retained by the defendants WATTS contrary to the order of the court.

And the further testimony of appellee, and the record is that Appellee completely failed to act as reciever, but in court objected to dismissal of the recievership, and asked delay in requirement for accounting pending the termination of the litigation.

g. Appellant being absent adjudication on the underlying issue, and appellee not acting to prosecute the litigation, appellant being ignorant of cross complaint proceedures, and denied the information by the pro-se clerk who evidently also did not know the proceedure sought to obtain the examination in 1971 with the following filed litigations.

DAVENPORT v. LINDSAY	70 Civ. 2205
DAVENPORT v. ROCKEFELLER	71 Civ 1747
DAVENPORT v. ALTMAN	71 CIV 4263.

The district court without hearings to ascertain the validity of the first two complaints dismissed them on the adverse claim of "Res Judicata".

The third entitled " COMPLAINT AND PETITION FOR THE ORIGINAL HEARING AND DETERMINATION OF FACT LAWFULLY REQUIRED AS DUE PROCESS OF LAW" remained in the courts until 1973. When after pre-trial conference Judge ** Gurfein as USDJ dismissed the case on a mis-statement of fact, and a mis-representation of the U.S. SUPREME COURT determination of law in the action WILLINGHAM v. BOWLES (1943). The action is hereat again in appeal, and by the rules of this court Judge Gurfein as an appeals court judge is not permitted to sit in review of his own prior erroneous decision to dismiss the action without trial.(More said in agrument later.)

This third action was also appealed , and Supreme Court Certiorari was sought, appeal was denied without statement of cause, and certiorari was denied.

h. Also during the years 1971-72-73, appellant sought to enjoin the involved action "DAVENPORT v. ALTMAN" with the instant litigation, he also sought rehearing, although no hearing had originally been held, on the original litigation DAVENPPRT v. BERMAN NYS 629/66: and rehearing in the action DAVENPORT v. BERMAN SDNY 68 Civ.

All of appellant's complaints, petitions, motions have been denied by the courts, on the New York City Corporation Counsel's false claim of Res Judicata, which is contrary to the findings of The Hon. C.M. Metzner: "Only questions of law were presented."

i. (1) Further in late 1971, after oral judicial orders incompleted by the court due to appellee's refusal to present the order for signing,

appellant undertook to manage the property. Absent the signed order of the district court, and absent the letter of authorization from appellee. Numerable difficulties with the tenants and occupants of the building were encountered. One such involvement involved court action Davenport v. Amaro, which appellant sought to enjoin to the district court action Davenport v. Altman et al, 71 Civ 4263. Subsequent litigation occurred which appellee also sought to enjoin with the instant litigation. The court below consistently refused hearing's to determine the issues and denied relief, or enjoinment examination.

(2) Appellant discovered during this attempt at management that some building tenants had moved, one had obtained the keys and re-rented the apartments. Most refused to pay the proper rents, continual troubles were encountered, yet enough rents were collected to cover most of the basic expenses. Some of which, taxes, insurance, etc. had been advanced during the litigation by appellee-plaintiff-mortgagee. An offer was made, a conference was held, an oral agreement was arrived at, and appellant made a series of payments to appellee thereto between 1972 and 1973. The *, asterisk seeks this courts attention. The reconsideration motion subsequently includes a document of the supposed agreement, which appellant denies.

(3) Appellant during this period of time was forced into local court litigation with the tenants. His authority was that of owner and not contested by the reciever who was inactive. He suffered from the absence of a written authorization from appellee-reciever and/or the district court, that he could not move in that court by means of a simple motion to enforce the claims against the tenants in accord with the district court's order filed Oct. 28, 1970, or the ORAL ORDER of The Hon. C. B. Motley of July 27, 1971 which was filed as a notation August 20, 1970 that appellant act as agent, and appellee-reciever draw up and submit the order for the judicial signature.

(4) The consequence of this was an inability to collect involved monies - which became the CAUSE of the JUDGEMENT ORDER of DISMISSAL dated July 19, 1974. And presumably the issue before the court on "RECONSIDERATION" which Judge Carter refused to allow to be mentioned or discussed.

(5) The further consequence was an action HOUSING DEVELOPEMENT ADMINISTRATION OF THE CITY OF NEW YORK v. WILLIAM J. DAVENPORT 74 Civ 5146, which was filed after the dismissal of July 19, 1974 against appellee as owner for building violations during the period of the recievership, and which had been filed in the New York City Court with notice to appellee of docket No. HP -134/74. Appellee sought on three occasions during 1974 and 1975 to locate the docket information in the New York City Court involved. However, a special clerk took care of these dockets, and they were separate from others and unknown to the other clerical staff, and the docket filing unseen prior to the trial proceedings mentioned below. The proper docket No. was HP 135/74.

(6) Appellant sought to remove this action to the district court as 74 Civ 5146. In consequence of the prior dismissal of the forclosure litigation the action was placed before The. Hon. L. W. Pierce, who ordered remand preventing enjoinment without hearing on the basis of claims made in accord with U.S.C. 28 § 1445 which has no lawful application to the involved action.

(7) Returned to the New York City Court - this action was examined by a "Hearing Officer" who by law was forbidden to hear the action, with jury trial properly motioned but refused, and with multiple other confusions and legal defects. The transcript shows the inadequacy and attitude of that court. Appellee had entered a proper and lawful counterclaim against

the involved NEW YORK CITY HOUSING ADMINISTRATION as the agency which had from a sub-section issued the orders underlying the litigation on Dec. 11, 1964. The court "Hearing Officer's" dismissal of the claim was a statement that "that's out of order" and to cut off the recording machine. Judgement was rendered by that hearing officer, and signed by The Hon. Dorothy E Kent, JSC NYS in the amount of $97,000.oo against appellant as the consequence of appellee's absence in recievership. This Judgement has been noticed for appeal, and is herein in appeal in accordance with the provisions affecting appellants "Motion to Enjoin" in the instant litigation which was filed May 27, 1975.

(3.) Appellant spoke above in sub-paragraph (3) that action in the local courts against tenants had been taken. In one instance Art. # 2, tenants Bryant had caused violations and obstructed repairs. They also refused to pay the rents. Appellant sought in the New York City and State court to enforce rent collection, obtained a judgement, which the tenant appealed contradicting the court orders and obstruction appellant-landlords entry for the prupose of repair. The appeal upheld appellant, but the monies involved by law assigned to appellant-landlord in the action had to be released by the New York City Court, which instead ordered their payment back to tenant on a claim of "public policy" by a "legal aid" attorney. Another tenant Amaro refused to pay rents and the action on all these tenancy conditions was placed before the district court in 1974 during the period of "dismissal", as a substitute for the cross-claim which would have had status had the litigation below been before the district court.

j. This litigation DAVENPORT v. AMARO, et al. Is still open before the U.S. SDNY district court docket number 74 Civ. 3302, and is an exact re-institution of the legitimate cross-claim which could not be filed in this action against the defendants named after WATTS". By appellant's motion to enjoin of May 27, 1975, this action is also,now in this appeal, before this court for consideration. Involved therein are the monies withheld by these defendants to the instant action, assigned by the Order of the Hon. Walter Mansfield,as USDJ SDNY entered Oct. 23, 1970, which it was appellee's duty as reciever to collect. But, which the existant JUDGEMENT ORDER # 76,466 of Judge Carter taxes against appellant to be paid by him to the culpably responsible appellee-reciever, due to appellee-reciever's abandonment of the responsibility anf refusal to comply with the orders of the district court.

12. THIS APPEAL INCLUDES ALL ISSUES encluded in the actions, which appellant sought to bring before the district court in his "MOTION to ENJOIN" of May 27,1975 in full force and effect, as this notice of inclusion puts before this court the full records and documentation with full force and effect. Those actions as noticed in the motion to the court below are:

HOUSING AND DEVELOPEMENT ADMINISTRATION OF THE CITY OF NEW YORK, Plaintiff,	L.W.P. 74 Civ 5146
- against. -	MOTION IN ACCORDANCE WITH F.R.C.P. 59 & 60(b) TO REOPEN AND BRING THE ACTION TO TRIAL ENJOINED WITH RELATED OPEN ACTIONS NOW BEFORE THIS COURT.
WILLIAM J. DAVENPORT, Defendant,	
Premises: 575 E. 168 St. Bronx, N.Y.	

UNITED MUTUAL LIFE INSURANCE COMPANY, Plaintiff, - against. - WILLIAM J. DAVENPORT, SALOMA B. DAVENPORT, WILLIAM WATTS, GRACE WATTS, et. al., Defendants.	R.L.C. 70 Civ. 3878 MOTION TO ENJOIN IN ACCORD* ACCORDANCE WITH F.R.C.P. 42.
WILLIAM DAVENPORT, Plaintiff, -v. - FREDERICK S. BERMAN, et. al., Defendants.	J.M.C. 68 Civ. 4984 MOTION IN ACCORDANCE WITH FRCP 52 & 60(b) TO REOPEN AND BRING THIS ACTION TO TRIAL ENJOINED WITH RELATED OPEN ACTIONS NOW BEFORE THIS COURT.
WILLIAM J. DAVENPORT, Plaintiff, - v. - BENJAMIN ALTMAN, et. al., Defendants.	M.I.G. 71 Civ. 4263 MOTION IN ACCORDANCE WITH FRCP 42 TO ENJOIN FOR TRIAL
WILLIAM J. DAVENPORT, Plaintiff, - v. - Mr. & Mrs. PABLO AMARO, et. al., Defendants.	L.W.P. 74 Civ. 3302 MOTIONS - TO RECONSIDER AND ENJOIN THIS ACTION WITH OTHER RELATED OPEN ACTIONS FOR TRIAL BEFORE THIS COURT and - ENJOIN CROSS COMPLAINT WITH THE DEPARTMENT OF TAX-ATION AND FINANCE OF THE CITY OF NEW YORK AS PLAINTIFF.
WILLIAM J. DAVENPORT, Plaintiff - v. - WINSTON D. GRACE, et. al., Defendants.	R. L.C. 75 Civ. 889 MOTION TO ENJOIN FOR TRAIL.

Which final litigation is an application for damages against plaintiff-appellee's agents for their improprieties of this litigation.

13. Appellee as plaintiff filed the instant litigation, appellant removed it to these federal courts in 1970. Appellee-plaintiff was named reciever in Oct. 1970. Appellee-plaintiff-reciever of his own visible testimony and the record,

between 1970 and 1974 failed to either maintain the recievership, and/or to prosecute the litigation. The rules of this district court during this time assigned the action in the middle of that proceedural time to The Hon. R. L. Carter USDJ, who called a pre-trail conference for May 17, 1974. Appellee did not appear, appellant sought credit for the missing rentfunds for which appellee as reciever was lawfully responsible. Judge Carter issued OPINION # 40985 July 19, 1974 dismissing the action and disolving the lien in compensation thereto.

14. Appellant returned to the New York State Supeme court obtaining a judicial order entering that judgement in the mortgage records of the court. Appellee did appear in opposition, his claim was considered and denied.

15 SEGMENT THREE - On Feb. 14, 1975 appellee filed a "MOTION FOR RECONSIDERATION". Thereto attached was a document purporting to be an agreement between the appellant and appellee; and an accounting statement which was in the motion stated to be "a different form" of the previously submitted and rejected by the court, mortgage account. The accounting document WAS NOT CLAIMED TO BE A STATEMENT OF RECIEVERSHIP ACCOUNTING, as had previously been of discussion by both appellee's attorney in his affidavit of Aug 17, 1971, or the dismissal order of Judge Carter of July 19, 1974.

16. The "Motion" sought reconsideration on the stated grounds of "excusable neglect" in that appellee had previously failed to prosecute, had failed to previously submit the "agreement" document to the court, and perhaps should have submitted the accounting in the newer formulation.

17. Appellant responded that the "Agreement" document was a forgery, whose terms changed no basis of the litigation or judgement, and that the accounting simply repeated the prior accounting rejected by the court, which was not the required "recievership accounting" of consideration before the court.

18, Judge Carter issued a new OPINION # 42189 of April 4, 1955 based upon judicial mis-statements of the facts and the record to arrive at a promised reversal upon a presumption of non-existant fraud. The judicial errors are shown in detail in the arguments, POINT

Judge Carter therein makes these shown judicial errors of mis-statement and misconstruction of record and fact:

(a) In the first paragraph, incomplete reference is made to an ORDER NOT SUBMITTED. Specifically, the records will show appellants motions to vacate the recievership in 1971, the order of Judge Frankel USDJ that appellee appoint a reciever in ten days. The order was not complied with, and appellant sought rehearing and voiding of the recievership with rehearing denied. Appellant then sought accounting for the funds of recievership, and the hearings before Judge Motley USDJ evolved the coercion of the court that appellant act as management agent, that appellee remain reciever, that 25% of the rents be paid to appellee by appellant for expenditure by them, and that an order so stating be drawn and submitted for judicial signature by David Dinkins, Esq, attorney for appellee. This is the ABSENT ORDER of reference. Which Judge Carter sought to render judgement upon without so stating in the OPINION # 42189.

(b) In the second paragraph Judge Carter states;" Defendant on May 21, 1974, filed a motion asserting that his underlying indebtedness had been more than satisfied from the rents collected by plaintiff as reciever. " The statement is in error. (underline added by writer.) The corrected statement (see the motion "Defendants Petition for Relief Upon

Dismissal of this Action. filed May 17, 1974") would be: " Defendant on May 17, 1974, filed a motion "" FOR RELIEF ... for funds involved, for which the reciever is lawfully responsible, and defendant should not further be held to plaintiff's account as indebted."" . " .

The recognition of the court in OPINION # 40985 of July 19,1974 was (pg 3 first pgh.) :" In substance defendant asserts therein that the sums which plaintiff should have collected as reciever exceed the amount of defendant's mortgage indebtedness. " (underline added.)

(c) In the last 5 lines top paragraph pg 2, Judge Carter correctly states: " Plaintiff filed a document on June 27, which as my opinion on this subject on July 19, 1974 indicates, and as plaintiff now concedes , did not contain the information which had been ordered submitted."

HOWEVER Judge Carter proceeds in paragraph 2nd pg 2 to MIS-STATE " .. plaintiff now .. has submitted a statement showing payment made on the mortgage since April 10, 1972 -- the document requested by the court last June. . . "

The court is in gross error. In question are RECIEVERSHIP accounts NOT any mortgage accounting, and appellee did not so repreeent the document submitted but says: " . . plaintiff . . submitted . . wrong form . . general accounting rather than one . . indicated what transpired between the parties . . ".

(d) And finally in page 3 Judge Carter indicates accurately the misconception and judicial misconstruction placed upon appellee's documents. "" . . , the prior order was issued on the theory that plaintiff as "reciever" had breached its fiduciary responsibilities in dealing with the court in re this matter. If it was in fact not reciever at the time in question, it may well be that an injustice has been done. While plaintiff contributed to this result and could be denied redress, defendant should not be allowed to profit on the basis of misinformation supplied to the court. ".

Plaintiff's attorney states the recievership condition. In the Evidentiary hearing (see transcript pg 3 line 15.) stating: ". . I think it is fair and accurate to say that technically United Mutual was the reciever. " .

THUS JUDGE CARTER'S EVERY CONSIDERATION IN ORDERING RECONSIDERATION PROCEEDINGS IS PREMISED UPON ERROR. And yet the Judge has already stayed judgement and promised a reversal of that judgement. For the reasons which are heretofore shown appellant disbelieves and distrusted Judge R.L.Carter.

19. Appellant filed a supplementary statement on April 23, 1975, Appellant asked reassignment due to APPARENT PREJUDICE of the PRESIDING JUDGE on May 16, 1975.

20. The court held Evidentiary Hearings on May 28, 1975. Judge Carter called a recess, and presence in chambers during appellee's appearance on the stand, to suggest that appellant compromise since the proceedings were a "CHARAGE". The proceedings terminated with appellant asking adjournment to obtain counsel. The court still permitted a "handwritting expert" to testify that the agreement document signature's in his opinion were not forged. No cross-examination was permitted, and he did not file his mentioned report. Upon Continuance of the hearing on May, 1, 1975 appellant's attorney was denied opportunity to examine the transcript or time to accquaint himself. Judge Carter forced the hearing to be abandoned and ordered TRIAL, although his basis of judgement is unknown, his issues of concern having been shown as judicial error.

21. As a consequence of the attitude of Judge Carter during the appearance on May 1, 1975, and as a consequence further from appellee's attorney's office; appellant's attorney, who had entered the case as an advisor making an appearance instead demanded of appellant to be released, " I can't do anything with that judge, and those guys "(appellee's attorneys)" would write one letter and I'd be out of a job." (Mr. Bing was a law professor at William Patterson College in New Jersey.) Judge Carter however, refused to release Mr. Bing until the week before trial, and appellant was so notified in court minutes preceeding trial. Judge Carter therefore was personally responsible for preventing appellant opportunity to seek other counsel.

22. Due to Judge Carter's behavior on June 4, 1975 motioned the court seeking pre-trial conference to define the issues. The judge's clerk informed appellant by telephone that he had no status being represented by an attorney, and refused him information or extended discussion of any sort. The court might note that the pre-trial conference of May 17, 1974 did not occur due to appellee's absence. The only issues of record for trial are those of judicial error stated in the Opinion # 42199 of April 4, 1975, Judge Carter having denied discussion during the evidentiary hearing on the fiduciary responsibility of appellee-reciever, or the original question of legality of the underlying rent control orders.

22. On June 26, 1975 Judge Carter's law clerk refused on a telephone call to answer appellant's questions as to the probable date of trial.

23. On July 1, 1975 at approximately 4:40 PM appellant's son recieved a telephone message from Western Union from appellee's attorney that trial was scheduled for 10:AM on July 2. 1975.

23. On July 2, 1975 in the moments prior to trial, (a) Judge Carter mentioned to appellant knowledge of a letter of complaint about his judicial behavior to the Most Hon. Thurgood Marshall, seeking his removal from the case. Which mention was implied judicial threat of return antipathy at this moment of trial. (b) Judge Carter denied jury trial, (c) Judge Carter denied the prior motion seeking re-assignment of the case to another unbiased judge, (d) Judge Carter denied any pre-trial statement of the issues in contest, (e.) Judge Carter denied appellant time to obtain and present witnesses, (f) Judge Carter denied appellant opportunity to appeal his handling of the proceedings. The transcript is not complete, but it is adequately indicative of the judicial attitude examined in conjunction with the docket entries, the involved confusion of judicial creation does show .

24. During the trial proceedings, as during the prior evidentiary hearing proceedings, Judge Carter prompted or spoke for appellee's witness, prompted appellee's attorneys, and continually obstructed and harrassed appellant. Details here would be unnecessary redundance. See argument Point .

25. Judge Carter conducted the "TRIAL" proceedings with only appellant of the involved and named eight defendant's required present, denying recognition to appellant's wife as a defendant, and thus denying appellant opportunity for examination of these other named defendants.

25. Judge Carter terminated the trial proceedings after stating that they were an "evidentiary hearing" stating that anything else must be submitted in writing.

26. Appellant seeking relief from the judicial coercion of bias entered appeal applications which were before this court in the appeal docket 3036-1975. Appellant

sought a stay of the proceedings before the lower court which were being held by Judge Carter in abeyance; that the proceedings entirely be set aside and new proceedings before a newly assigned and unbiased judge be substituted, and other necessary elements of relief.

Due to this court's rule absenting argument on motions for stays, at the last moment appellant was denied by this appeals court opportunity to argue any of the involved questions. Further Judge M.I. Gurfein as USDJ had dismissed the action 71 Civ. 4263, and set on the panel to continue the denial of hearing opprotunity contrary to the rules of this appeals court.

27. Appellant sought relief from the closed doors of these lower courts in a Petition for Certiorari to the United States Supreme Court, Oct. Term 1974 No. A - 475, which was denied.

28. Subsequent to appellant's attempts to stay and stop the action of Judge Carter failing, Judge Carter issued his opinion from the "Trial proceedings" of July 2, 1975, OPINION #44084 OF March 17, 1976, in which without stating cause Judge Carter reverse his original opinion # 40985 of July 19, 1974.

29. Judge Carter further issued JUDGEMENT ORDER # 76,466 which provides appellee with all costs sought including interest, and assigns payment of monies previously assigned by the district court to appellee, from appellee to defendants WATTS simply because that defendant has contravened the prior order dated Oct. 28, 1970 of Judge W. Mansfield to obtain those funds from the Serriff of the Bronx, and has them in possession. All of which is taxed against appellant with indiscrimination and without consideration of judgement. Judge Carter obviously seeks revenge for appellant's disclosure of his improper conduct of July 10, 1974.

30. Appellant noticed appeal of the OPINION # 44084 on April 14, 1976.

31. Appellant recieved notice of the Judgement ORDER # 76,466 on July 21, 1976. It is noted as from the clerk's office on July 9, 1976. The decision date is noted as May 14, 1976. The stampings thereon are dubious, it is stampted as recieved by the office of Judge Carter on May 17, 1976, the Clerk's office on May 20, 1976 and microfilmed on May 2, 1976. This appeal by it's nature is an appeal against this JUDGEMENT ORDER.

32. Further delay and confusion in the appeal filing proceedure is caused by the "loss" of the files hereto from the office of the Court Clerk. It seems that by order of Judge Carter, a large portion of the files were transmitted from his office to the warehouse in Jersey City, and located only after seeks of delay.

POINT ONE

THE DISTRICT COURT DENIED APPELLANT DUE PROCESS OF LAW BY HOLDING PROCEEDINGS AND TRIAL DENYING THE ISSUE BEFORE THE COURT WHICH WAS THE BASIS OF FEDERAL ENTRY AND FEDERAL JURISDICTION.

The court below, in the instant litigation, refused to examine appellants "federal question" which was cause for removal. Specifically that underlying the litigation were causative circumstance involving unlawful exercise of the police authority of the State Of New York, prior fraud maintained providing the basis of cause for the litigation, including an unlawful garnishee of the monies in issue by another defendant to the litigation. Further, the court below refusing examination of the question, sought to prosecute trial without the other defendants present, and to render judgement assigning them compensatory payments.

FURTHER, the court below assigned a recivership to appellee-plaintiff, issued orders to that appellee-reciever-plaintiff which that party ignored. The court below coerced an agreement between the parties by which appellant would act as management agent of the involved property during proceedings. Appellee again contemptously refused to submit the involved order for judicial signature as instructed by the court.

The situation created was abandonment of recievership and management of appellant's real rental property during the pendancy of litigation. Appellant at this point sought to restore that management, but was inadequately effective, unable to exercise the authority held by appellee, and the court.

As consecuence of appellee's laches, the district court dismissed the action and having been informed by appellant that absent recievership accounting was for more than $18,000.00 or greater than appellee's claim as mortgagee rendered judgement dissolving the lein of mortgage held by appellee-reciever-mortgagee-plaintiff in OPINION # 40985 filed July 19, 1974.

In an extremely unusual action, appellee more than six months later placed a "Motion to Reconsider" before the district court. The grounds as indicated below were essentially fraudulent and contemptous of the court's judgement. However Judge Carter issued an new OPINION # 42189 judicially creating grounds for "reconsideration" by mis-statements and misconstruction thereupon of the record. Judicial errors will also be shown in the paragraphs below.

On the basis of his own judicial misstatements of the record, Judge Carter held Evidentiary Hearing proceedings, in which APPELLEE stated the judicial error. Despite this the Judge Carter ordered Trial. Without warning Judge Carter changed the judicial position to place an unlawful burden of proof upon appellant-defendant to disprove the statement of judicial error, and to somehow supply appellee's absent recievership accounting.

Appellant was unaware, unprepared to answer, and totally unable to prove this improbable and impossible judicial preposition premised upon judicial error. Judge Carter acting from his own biased position further confused the proceedings as shown heretofore and hereafter in this document to eventually issue his fore intended judgement reversing his prior judgement in a new opinion # 44084.

THE ISSUES ORIGINALLY BEFORE THE COURT were (a) the conditions and laws of mortgage forclosure, protecting the real property equity of mortgagor and mortgagee following a mortgage payment failure, and (b) the lawful assignment of responsibility thereto in the instant circumstance where appellant-owner-

the defendants in the action below, WILLIAM and GRACE WATTS, as an effect of New York City Rent Control exercise of the Police Authority of the State of New York in a manner appellant seeks to show was unlawful and maintained by that agency subborning the courts throught fraudulent averrments and having prevented prior examination of the issues.

OF THIS PRIOR QUESTION, appellant's contention is that he was and is unlawfully constrained into the present situation and condition by the unlawful exercise of police authority of government, that the involved government agents are ultimately responsible. And further, that the defendants WATTS have acted contrary to law effecting garnishee seizure of the monies hereto of original concern. Originally appellant had no contest with appellee's claim to mortgage satisfaction. (That issue arrived with appellee's fiduciary failure as reciever during the litigation.)

The circumstance of the prior question, avoiding unceecessary reduncance, and in chronological order with proffs of record indicated is this.

Apellant having purchased the involved property, a 8 family apartment house at 575 E. 168 St., Bronx, N.Y. obtained from "THE STATE OF NEW YORK TEMPORARY STATE HOUSING RENT COMMISSION " ** , a Certificate of Eviction, Docket No. E-7883 issued July 13, 1955. The prior tenant departed apparently in July 1955 owing two months rent. Apellant occupied the apartment placing his furniture there in August 1955. Appellant physically entered residence in the apartment Oct .5,1955, obtaining utility service therein in his own name October, 6, 1955.

Appellant was employed as a Merchant Marine Radio Officer, and away at sea during August/September 1955 and subsequently. (New York City Rent Control Agency's comments during prior litigation regarding appellant's motives and plans are totally baseless and false, Appellant can prove his stand, but the question here is moot.) During his residence in the apartment, appellant had an other single man as a "roomer", and in 1957 planning to transfer to another apartment agreed to the rooner, Mr. George Gowins, taking over the tenancy of the apartment (Apt. # 1,) upon his departure.

Section 2(2) of New York State Rent Control Law provide statutory exemptions. Section 2(2)(h) provided exdmption of the involved apartment on July 14, 1957 as here indicated:

> "Housing accommodations which are rented after April 1, 1953 and have been continually occupied by the owner thereof for a period of one year prior to the date of renting; provided however that this paragraph shall not apply where the owner acquired possession of the housing after the issuance of a certificate of eviction within the two year period immed ately preceding the date of such renting . . . ."

Appellant filing notice with the State Commission Oct. 14, 1957 was advised by an official as well as a desk clerk that the " LANDLORD'S NOTICE OF STATUTORY DECONTROL" State Commission Form 42, Docket DR-3974 fulfilled all lawful requirements, although the exact information was inaccurate in that appellant still did reside in the apartment, and the tenancy agreement was promisory.

(** hereafter of reference as the State Commission.)

Additionally between 1957 and 1962 appellant in concord with the same provision of law, before the same State Commission filed four more such "Decontrol Notices"; three of which are hereat also of issue in related litigation.

By law, the State Commission was replaced by a New York City rent agency (hereafter City Rent Agency, whose exact title has constantly changed.), which iniated a series of administrative actions during 1963 and 1964. These actions carried out without appellant having information prior to 1971 are hereto described as proof can be shown of record in chronological order.

The New York State rent control statutue of 1962, Chapt. 337, § 4(4)(e) is:

"Before ordering any adjustment in maximum rents, a reasonable opportunity to be heard thereon shall be accorded to the tenant and landlord. "

Further: Chapt 21 § 10(a) provides:

" Whenever in the judgement of the city housing rent agency any person has engaged or is about to engate in any acts or practices which constitute or will constitute a violation of any provision . . . , the city housing rent agency may make application to the supreme court for an order directing the landlord to correct the violation . . . . . Jurisdiction shall not be deemed lacking . . ."

Both of these provisions provide for hearing. But the action of the New York City Rent Agency was stated in the related action which appellant sought to enjoin with this action "DAVENPORT v. ALTMAN, et al. 71 Civ. 4063" in answers and supplemental answer to an interrogatory on the 24th of July and the 21st of September 1972. Documents included in the index hereto.

(a) The City Rent Agency had sought to treat the established decontrol statutory exemptions as "applications".

Interrogatory question 5 asks if such applications exist. Answers were attested by Benjaman Altman, Administrator, and Harry Daniel W. Joy, Gen. Counsel and Harry Michelson, attorneys for New York City Rent Control.

ANSWER " , , , in 1963 upon the iniative of the District Rent Director. , the said landlord's Reports of Statutory Decontrol were treated as applications for decontrol. . "

This contravention of law is contrary to The State Rent Administrator's Advisory Bulletin No. 1, par (13) REPORT OF STATUTORY DECONTROL which provides:

" . . an application for decontrol is not required . . "

And by the Appellant Division of the New York State Supreme Court (FORBES v. LOMAZOV, 22 A.D. 2d 800)

" The decontrol is fully effectuated by the owner's actual occupancy of an apartment for the period prescribed by the statute. "

(b) Appellant recieved no proper lawful notice of the administrative charges against himself.

Interrogatory Question asking whether charges of "fraud" in the State Commission filings had been charged . The dockets previously approved by the

State Commission officials, this being the only grounds for the administrative action, was the application of "what charges exist", Interrogatory No. 7 & 8.

The answer and supplemental answer were both evasive - but the answer states.

" . . no criminal charges were filed, but administrative determinations were based in substantial part upon findings in substance of lack of credibility of the . . landlord's . . claims . . .

* N.B. (lack of credibility - the administrator did not believe.)

(c) Appellant questioned existance of notice and proceedings according to law. the answers are evasive, a hearing being mandatory, and judicial application warranteeing a hearing, being part of provision 10(a). The interrogatory questions No. 8 & 9.

Supplemental answers state : Notice of charges was given to . . Davenport in various ways . . sent to an attorney . . explicitly offered an opportunity to submit evidence . . proceedings . . were adversary in nature . . constructive notice was also given by the general availability of the file . . No oral hearing was held but the landlord was given the opportunity to be heard in the sense that he was entitled to be aware of, and was constructively aware of, . . adverse data . . . "

The above administrative allegations are "constructively" intentional fraud. All litigation derives from the fact that appellant was unaware of charges against himself, unable to answer, and the files were kept secret by that administration with such vigor that a motion to quash subpoena for those records was entered in the action DAVENPORT v. BERMAN 68 Civ 4984. Further, examination of the alledged Notices will show their impropriety, and limits of permissable answers.

Hereto at issue is Apartment #1. The grounds upon which the administrative order was issued was an administrative claim that appellant had not resided therein for two years, Which was an acministrative claim, false in fact, and not the requirement of law, which was one year of occupancy, which that document verified.

(d) As to the proceedings including hearings required by § 4(4)(E) of the rent control laws, and also the court proceedings required by § 10(a) The supplemental answer states pg 3 (g) " Oral hearings were requested ny the attorney for Mr. Davenport. . . but oral hearings were denied . . Mr. Davenport, through his attorneys, continued to assert as error the refusal to afford him an oral hearing, and his contentions were rejected in an N.B. * administrative appeal, as well as through judicial proceedings .. . in the New York Supreme Court.

N.B. * - The administrative appeal "progress sheet" B(a)8 of exhibits demonstrates the crass administrative negligence , absent proceedings, and false legalistic cllegations and averrments. Judicial proceedings are subsequently discussed.

(e) As regards the grounds upon which the New York City Rent Agency claimed to - ? - , revoke or negatively adjudicate, or deny or whatever to reverse the statutory decontrol of Apartment #1, multiple family occupancy and owners insufficient residency of less than two years. Interrogatories 11, 12 & 13.

Answers and Supplimental answers pg C (b)4 and C(c)5 states:

" No claim was made that . . landlord rented any apartment for other than single family occupancy . . " and an allegation is made that "the two year residence requirement in state law is found in Section 2(2)(h)."

This court is refered to the specification of law on the bottom half of page 17 of this document or more fully stated on the "State Commission Form 42" page B(a)2 of the Exhibits to this brief. The allegation is knowledgeable, intentional, deliberate fraud, with legal expertise for the purpose of subborning the district court in the litigation involved. It misrepresents the law to alledge a requirement which is not therein.

OF THE ADMINISTRATIVE ACTION hereto the "ab initio" underlying question. Appellant effected statutory exemption of the subject Apartment #1, 575 E. 168 St. Bronx., N.Y.

The original State Commission docket sheet [Exhibit B(a)2] contains the notation in the lower left hand corner of approval. The docket was closed and warehoused, with the CLOSED stamping on the lower right hand corner, and the file cover [Exhibit B(a)3].

This docket was opened for review, See copy of adm. letter and note Exhibit B(a)4, "upon the initative of the District Rent Director" and " treated as an application for decontrol". Which claimed application was a contradiction of law. and reviewed and administratively revoked [see order Exhibit B(a)7], or " adjudicated . . invalid and . . not entitled to decontrol. . orders . . issued Dec. 11, 1964 . With " determinations . . based . . upon . . lack of credibility of . . landlord's . . claims. . by the district rent administrator . . hearing was denied. . " the previously approved dockets of Statutory exemptions.

The administrative action was forbidden by law [this document pg 18, pgh (a)], and done under a false administrative docket number [Int. answs, pg c(b) 2 lines 4 & 5] and the administrator's claime to authority [see Exhibit pg C(b)5] " to supercede any rules regulations, orders, determinations and decisions of the State Rent Control authorities.", and rejected on the administrative disbelief. NO OTHER BASIS IS SHOWN, although vague claims are alledged, proof or examination proceedure is totally absent.

THE QUESTIONS ENTERED THE COURTS - being the issue of appellant's application to The New York State Supreme Court, DAVENPORT v. BERMAN, 629/66 . Appellant also sought a Temporary Restraining Order. And,

As subsequently described by City Rent Agency attorneys " before answering respondent cross-moved to dismiss" , and without hearings the court dismissed the application paraphrasing respondent's false averrances as to administrative proceedings and findings.

The issue transferred to these Federal Courts in the Original Action DAVENPORT v. BERMAN, SDNY 68 Civ 4984. Appellant sought a Temporary Restraining Order, and sought to Subpoena respondent City rent agency records, which as yet had been kept secret from him.

Again before answering, the City Rent Agency attorneys cross-moved to dismiss, falsely averring to "proceedings and findings " of the New York State court, also seeking to quash the subpoena. Again Judge Canella on the false premise of the fraudulent averrments of these attorneys dismissed the action, wrote a six page opinion paraphrasing their fraudulent submissions as cause, and quashed the subpoena thus permitting the records to remain secret to that agency.

In a series of subsequent litigation's appellant's attempt to obtain the original examination of the underlying issues mandatory by law and denied due to the frauds perpetrated by the New York Rent Control Administration agents by which the courts had originally been subborned, was constantly reiterated by the opposition attorneys continuing the fraudulent base and the courts continued to non-preform, making all litigation non-suits dismissed upon the fraudulent non-sequitur. A concurrent litigation DAVENPORT v. ALTMAN SDNY 71 Civ 4263 permitted the interrogatories, and elicited the answers and supplimental answers. And; although the complaint itself was entitled " COMPLAINT AND PETITION FOR THE ORIGINAL HEARING AND DETERMINATION OF FACT LAWFULLY REQUIRED AS DUE PROCESS OF LAW" and directed at:

> "BENJAMIN ALTMAN Commissioner of the New York City Office of Rent Control; DANIEL W. JOY and HARRY MICHELSON who are General Counsel in the New York City Office of Rent Control; Mr. & Mrs PABLO*, Mr. & Mrs Dmitri PEREZ, Mr. & Mrs WILLIAM DENT*, Mr. & Mrs. MANGANARES, Mr. & Mrs MANGANARES, Mr. & Mrs. MEDINA, all of whom are tenants; and Mr. & Mrs. BRYANT, Mr. & Mrs. WHOVER DENT*, and Mr. & Mrs. HALE all of whose names are uncertain but who are OCCUPANTS of apartments in the building known as 575 E. 168 S_t. Bronx."

(* asterisk - Mr & Mrs PABLO should be PABLO AMARO, Amaro otherwise of mention in this document, and Mr. WILLIAM DENT is error for Mr. ARDIE L. DENT, also of other mention in this document, and Mr. WHOVER DENT is one of Mr. Ardie L. Dent's married sons. Two of whom he entered into apartments in the building at different times.)

Judge Gurfein after pre-trial conference at which he referred to things to be shown during trial, prevented trial by dismissing the complaint on the premise question of the complaint relating to absence of prior proceedings was somehow superceeded by the stated falsely claimed administrative proceedings which of record are non-existant and that Judge Cannella's ruling of absent prior showing of denial of constitutional due process "was law in the case". Appellant was again denied the forum of the court to state the facts of record because previously he had not stated the facts in the record because he had previously been denied the forum of the courts and the original administrative office and could not meet the prior or present impossiblity demanded of him in completed form.

IN THE INSTANT ACTION, repeatedly from the first removal papers through the multiple motions seeking to enjoin litigation, and the Evidentiary Hearing and Trial Procedings before Judge Carter, appellant sought to open the underlying question that there had been a faulty administrative activity absent lawful proceeding with a resultant absent finding of the facts and absent determination of the law. That he was entitled to a determination of the facts as provided by the fourteenth amendment to the United States Constitution (to defend which right, his country has risked his life in battle, in time of war - The WW II, invasion of N. France as example - which war is still given as the reason for the involved rent controls.) which provides:

> "No State shall make or enforce any law which shall . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws. "

THE UNITED STATES SUPREME COURT HAS HELD:

> " When constitutional rights turn on the resolution of a factual dispute. We are duty bound to make an independant examination of the evidence in the record" (Brookhart v. Janis, (1966) " .

The involved New York State Rent Control Law itself specifies:

> " No person shall be held liable for damages or penalties in any court on any grounds for or in respect for anything done or omitted to be done in good faith pursuant to any prevision of this act. . . "

However Judge Carter of the district court during proceedings refused to allow examination or presentment of the issue simply stating: (see pg 51, 52 and 53 of the trial transcript, specifically lines 14 thru 18 pg 52 and line 3 & 4 pg 53.)

" . . I am (not) listening to any documents in 1955 or 1957 and so forth. That matter has been litigated someplace else. That is not the issue that is here. "

((the (not) is absent from the transcript. See the general context for confirmation.)

" . . " I don't want to hear anything about 1957."

Amid the confused detail of POINT ONE, these 5 plus pages, and at issue. The entire series of these related litigations derives from "ab inito" Dec. 11, 1964 rent administration Orders with the police authority force of New York State government which was created and stands on a fraudulent basis, ultimately terminating in the instant judgement of the court below depriving appellant of his real property without his having been "ab initio" charged with lawful cause, or provided the notice thereto of charges, or given the lawfully mandated opportunity to speak and be heard in his own defense, which constitutes the FIRST ELEMENT of DUE PROCESS OF LAW.

I respectfully submit to this court that the involved Judgement Order # 76, 466 is premised upon original third party fraud and is unlawful. I further submit that the proceedings denying appellant examination of the herein stated prior issue are equally unlawful and are contrary to the proceedural rules of this federal court system.

POINT TWO

THE PROCEEDINGS OF THE COURT BELOW DENIED APPELLANT'S CROSS-CLAIM EXAMINATION OF CO-DEFENDANTS BY DENYING JOINDRE OF RELATED ACTIONS AND WHILE ALLOWING THEIR ABSENCE WITHOUT RECOGNITION, COMMENT, EXPLANITATION OR CAUSE DURING TRIAL; THE COURT BELOW FURTHER ASSIGNED COMPENSATORY PAYMENT TO ONE SUCH CO-DEFENDANT IN JUDGEMENT. ALL OF WHICH DENIED APPELLANT DUE PROCESS OF LAW, EQUAL ACCESS TO THE COURT AND JUDICIAL PROCESSES, AND FAIR TRIAL.

The "federal Question' in issue" which was the cause for removal of the litigation as stated in POINT ONE was the New York City application of the Police Authority of the State of New York to deny appellant his property rights provided under the United States Constitution, and his rights to be heard on the issues developed thereto. All of which is shown contrary to warrantees of the United States Constitution, The United States Codes and Supreme Court decisions, and the involved laws of the State of New York. The situation being further compounded by the denial of the New York State Supreme Court and Appellate Division to provide appellant the hearings to determine the facts which that administrative body had denied.

The issue attained "federal court" status with the opinion which accompanied the dismissal of appellant's original federal litigation. U.S.D.J. The Hon. John Cannella, having voiced an opinion, ableit without having examined even the record, could not be superceded by appellant in the state courts.

Appellant respectfully sugmits to this appeals court, that Judge Cannella's statement of reason for dismissal as such was excessive, but did not lawfully constitute an adjudication, however it was given this status in the adverse attorney's claims, and by Judge Tennen USDJ SDNY when he dismissed a replacement litigation DAVENPORT v. CITY RENT 70 Civ. 1011, on the basis of "Res Judicata."

I, a layman, submit that these district court judges were injudicious and wrong assigning weight without first measuring amount to a sub-concern of litigation. And that is so doing they distorted all future litigation creating more judicial problems than court convenience acquired by the dismissal. I submit that this court does now need to recognize and state clearly the misuse of the "Res Judicata" provision for dismissal where there has in fact been no "Judicata" or adjudication.

As stated in D 8 on pg 5 & 6 of this document, the underlying administrative action, coupled with the refusal of the courts to examine the question provided tenant-defendant WILLIAM and GRACE WATTS an unlawful grounds for suit. Which suit they entered in the New York State Courts, which appellant's then attorney caused to be continually adjourned on the belief that those courts would not examine the underlying question, and without which appellant had no defense. That attorney failed to make one of the court appearances resulting in a default judgement, which by agreement was set aside pending adjudication of the underlying question.

Those defendants in February evidenced a breaching of the agreement by serving upon the building tenants a court order of rent garnishee. Appellant had been served with no notice prior to the issuance of the order, and was not served with a copy of the order. His whereabouts were well known, of official record, and without attempted absence to avoid any form of contacts. The process of effecting that order was contrary to the requirements of lawful notice, and unlawful.

The consequence of this unlawful order garnisheeing rents was the financial failure of building management commencing in March 1970 which resulted in the forclosure notice of August 1970, which is the litigation in the court below. The QUESTION developed AT FEDERAL COURT LEVEL which no lower court could then answer, was whether appellant had been heard on the lawful underlying issue as Judge Cannella had implied in his erroneous mis-statement of fact, which paraphrased the fraud by which the district court had been suborned by Corporation Counsel of New York City. And further whether in consequence an unlawful litigation had been effected by the tenant-defendants WATTS causing the instant forclosure litigation to constructively effect a truely unlawful confiscation and seizure of appelants constitutional rights of property ownership and rightful management authority, his personal property in the form of rent monies, and his real property involved in the mortgage forclosure.

The underlying action attempted and continually of contest, of the New York City Rent Agency now became the cause of property seizure. Where these federal courts had intruded an obstruction to action by lower State courts. The only level of possible relief was the United States District Court. Appellant's only available course of action was necessarily before that court.

> " An attempted action of a public body without power is void and <u>may be attacked for want of jurisdiction</u> at any time when an attempt is made to enforce claims founded on such action"

(People ex rel N.Y. Central R. Co. v Lindburg, 283 N.Y. 344, Matter of Long Island R.R. Co. v. Hylan, 240 N.Y. 208.)

I respectfully submit to this court, that as shown under POINT ONE, the underlying ORDER of the New York City Rent Control Agency was without lawful authority, and is therefore void. The rent garnishee was an unlawful enforcement where adjudication authority did not longer reside below the level of the district court. That I as the injured party rightfully brought the question before the district court. That the order of The Hon. Walter Mansfield as USDJ filed Oct. 28, 1970 which assigned the garnisheed collection to appellee during the pendancy of the litigation, did fully subordinate the involved question to the subsequent determinination thereto to be made by the district court.

I respectfully submit that appellee's failure to prosecute the action properly between 1970 and 1974, and the action of the district court which in effect reviewed on segment improperly of an action which had not originally been examined - was in fact an unlawful absence of mandatory judicial process.

The proceedings of the district court permitted absence of defendants WATTS except when they chose to intrude in 1970. The order of Judge Mansfield in Oct. 1970 assigned the garnisheed rent monies to appellee. The defendant's WATTS contrary to the order of the district court, and being aware of that order, went behind the court's back and obtained the involved money from the office of the Bronx Sherriff. Which Sherriff's office had been previously served with a certified copy of the court's order and ignored it.

Judge Carter order Trial proceedings July 2, 1975, appellant-defendant was notified by a telegraph company telephone call recieved by his 9 year old son, from the appellee's attorney's at approximately 4:40 PM July 1, 1975. The other named defendants were not present at trial, no notice thereto was taken by Judge Carter.

Further none of the other defendants had been required present at the "Evidentiary Hearing" of May 28, 1975. Appellant-defendant at both proceedings sought to bring the issue before the court. And in both proceedings he was at that moment interrupted by The Hon. Judge Carter, who undertook to prevent the line of discussion involving the other defendants in any manner.

FURTHER appellant during the course of the litigation below, sought to enjoin the action with secondary related litigations, and thereby bring responsible third parties, and developed and related questions due to appellee's failure as reciever before the court.

Contrary to the rules of these courts, the litigations were assigned to different judges in the district court, and the judges acted to dismiss, to remand, and to refuse examination proceedures individually, and to deny the motioned enjoinment which would have been consistent with the rules of the court and mandatory to FAIR TRIAL and DUE PROCESS OF LAW.

FURTHER and finally in the litigation hereto below, Judge Carter issued a judgement, after his ordered proceedings in which he personally denied appellant opportunity to even speak on the issue of defendant WATTS unlawful claim, litigation, and seizure of the rent funds then Judge Carter assigned the monies previously ordered paid to appellee, now to defendants WATTS simply because they had the money in possession with appellee's stated approval; and he orders that appellant-defendant-owner replace the absent funds with interest all to be paid to appellee.

Appellant pro-se must respectfully submit to this court that Judge Carter did not seek to adjudicate the questions before the district court, that Judge Carter did not even seek to recognize the questions before the court, and that Judge Carter has issued an unlawful Judgement Order # 76,466, which this court is duty bound to set aside, with review and full examination ordered before a

different district court judge with the forestated instruction of this court to include all issues and parties in a new and full examination of the questions herewith before this court in all litigation hereto related.

POINT THREE

THE PROCEEDINGS HERETO IN THE COURT BELOW APPEAR TO HAVE BEEN BIASED AND PREJUDICED BY AN ATTITUDE OF THE HON. JUDGE R. L. CARTER, U.S.D.J. WHICH WAS SUB-ROSA AND PREDETERMINED THE JUDGEMENT.

Appellant in the pre-trial conference called by Judge Carter on May 17, 1974 sought to speak in reference to his "Motion Seeking Relief Upon Dismissal of This Action." Judge Carter refused to accept a copy of the motion, and refused to permit appellant to speak, in the absence of appellee he had in his notice promised dismissal, and now was so-ordering refusing appellant opportunity to be heard. This was appellant's first meeting and contact with Judge Carter.

The order that day of Judge Carter dismissing the action, ignoring the multiple laches of appellee provided injury to appellant, and denied him examination of his cross-claim considerations. (In reality because as a layman he did not know how to properly file the cross-claim.) Appellant moved to appeal, and Judge Carter re-opened proceedings providing appellee two hearing opportunities to present his arguments. The attitude evidenced by Judge Carter was obviously favorable to appellee. Appellant a loose fringe associate of the same social grouping of Appellee's agents and Judge Carter discovered quickly the long-term acquaintance between Judge Carter and members of appellee's firm.

Further Appellant required to obtain orders staying the filing time of his appeal papers was sitting outside Judge Carter's chambers on Wednesday July 10, 1974 when his Secretary left for lunch, asking him to wait outside the office, since no-one was there except Judge Carter in conference in chambers. Approximately fifteen minutes later, obviously the inner door of Judge Carter's chambers opened, and behind the outer door his voice was heard assuring someone that in a hearing to be held in three or four months "that's what we'll do","we'll take care of it", "don't worry about it, we'll take care of it."

From that point in time, appellant of necessity must distrust Judge Carter. He immediately filed a motion seeking that the court avoid the appearance of prejudice. Ultimately Judge Carter dismissed the litigation with compensation to appellant due to absent "accounting for funds of recievership", OPINION # 40985 of July 19, 1974. Subsequently after renewed proceedings appellee indicated the absence in fact of the funds.

The "Motion To Reconsider" papers of appellee are unusual not only in their request, and in it's extreme lateness of six months instead of the 10 days provided in F.R.C.P. 59, but appellee's attorney has the unusual impudence to ask the review for "excusable neglect", while presenting documents with the questionable features shown below.

The "excusable neglect" is lack of prosecution between 1970 through March of 1972 without stated cause, and Jude 1973 through July 1974 without cause. (From March 1972 through June 1973 appellee claims agreement discussion as cause.) The retention of recievership with argument thereto before Judge Frankel in Feb. 1971, and Judge Motley in August and September of 1971. Blithly ignoring Judge Frankel's order given in court in Feb 1971 that appellee appoint a management agent within ten days and so notify the court. The docket is marked " SETTLE ORDER ON NOTICE". Appellant's motion to have the recievership declared vacant is to be denied. The records of the court will shown no notice that the agent was appointed at any time.

Appellee totally abandoning the recievership, the property was unmanaged, and appellant-owner was being informed of the deterioration and loss by various knowledgable parties including some of the building occupants. Judge Frankel refused to "rehear" the motion to have the recievership declared vacant. Appellant sought to force recievership accounting and a clarification by the court of the recievership responsibilities. The Hon. Constance B. Motley in July 1970 using the power of the court coerced an agreement between appellant and appellee's attorney. By the instruction of the court, appellee's attorney was to immediately draw up the order as directed, and present it to Judge Motley for signature, and provide appellant a copy as legal management authorization during the litigation. Appellee's attorney with utter contempt for the court not only did not draw up and submit the order for signing, but on the date set by the court for return that a report of progress might be made, appellee's attorney David Dinkins, Esq. accompanied by Mr. Winston D. Grace returned to court to argue that the percentage of the collections assigned by the former order of the court was insufficient. Appellant sought to offer the court a copy of the prior directed order, and was rejected. THUS IS THE MEMO OF THE COURT of constant discussion, " 7 - 12 - 71 , Motion disposed of in accordance with court's ruling."

Thus appellee's attorney's motion asking the district court to "excuse the neglect" of his prior laches amounted to a showing of crass contempt for the authority of the district court.

Further - of the accounting statement accompanying the "Motion", it is stated to be "a different form". The prior opinion of the court is extremely specific in discounting the information originally filed. The two accounting statements contain identiical information. If the entries of the statement of June 17, 1974 are labled A,B,C,D, 1, E, 2, F, 3, G, 5, H,I, 6, 7, J, 8, K,L, 9, M, 10, 11, N ; then the accounting document with the motion reads: 1, 2, 3, 4, L.I.Premium, 5,6,7,8, F.I. Premium 9, 10, 11, 12, R.E. Tax, 13, 14, L. Ins Prem., R.E. Tax, W.& S Chgs, Fire Ins Prem. , Rcvd from Sheriff.

Appellant would note that any intelligent party would consider the additional information of the new accounting statement a proper submission to the court, it does not provide any definate change of information, or cause of reversal of the itigation.

Further - appellee submitted an "agreement" document, which appellant had already sworn to be a forgery. Appellant's averrance thereto is <u>not</u> changed. Which issue is not moot, but here bypassed. The alledged "agreement" is limited in scope to less than the provisions ordered by The Hon. Constance B. Motley in July 1971, which is presumably of judicial notes. The proper presentment in time of this alledged agreement document would have been the responsibility of appellee, rather than of appellant. Under any or all circumstances appellant has not tried to hide any agreement. Actually oral agreement was reached at least three times between Winston D. Grace and William Davenport. But, delivery of the authorization document was first not provided, second crossly changed by appellee's attorney David Dinkins and rejected by William Davenport, and third again promised, not provided, and then alledgedly produced for the court as a forged document. (An excellent forgery, some member of appellee's group has excellent criminal contacts.)

The critically important thing about the "agreement" document is that it says so little, it is less than the reciever's management agreement ordered by Judge Motley; however; Judge Carter seemingly seeks to hang the entire case on the existance of this document which appellant swears to be a forgery, but Judge Carter not only obstructs the certification proceedure of the cross-examination of a "hand-writing expert" but forgets himself in court to disclose his intended judgement, in the Evidentiary Hearing.

This cou t's attention below is directed to Judge Carter's general pattern of behavior. Immediatly of mention is Judge Carter's statement in the transcrirt of the Evidentiary Hearing page 93 line 4 and it's included context; while speaking of appellee's witness to appellant he states:

" But I would think in terms of your cost, Mr. Davenport . . . ."

Judge Carter at that point in time has indicated his intended judgement. However, appellant was aware since July 10, 1974 that Judge Carter arranged hearing preceedings with individual parties there to four months in advance, and that he was not on the favored list. Appellant had read no new claims in appellee's "Motion" . Judge Carter's OPINION # 42189 of April 4, 1975 thereto in response is of a different breed.

Judge Carter's Opinion # 42189 first spends effort to gloss over appellee's rather contemptous treatment of Judge Motley's order of July 12, 1971. Then Judge Carter mis-states appellant's statement of record. Accidental error appears impossible, he too effectively pressed the difference of the point in his Opinion # 40985 of July 19, 1974. Judge Carter has twisted the true statement that " appellant asserted . . rents should have been collected", into " asserted . . rents collected " ; which is a diametric reversal in reference to absent funds or absent accounting of funds. And by Judge Carter's erroneous reversal appellant is implicitly accused of fraud, which therewith, of course is untrue. Next and third Judge Carter in the top paragraph of his page 2 implies ignorance of the party filing the prior "Accounting Statement". The implication is inaccurate, the same party, Winston D. Grace, Exec. Sec. Trea. of United Mutual provided both documents. In the next paragraph Judge Carter misrepresents the newly filed repetition of the original accounting statement to be " the document requested by the court last June." The judicial statement directly contradicts the same judicial opinion, and recognition of May 21, June 27, or July 19, 1974. Appellant sought, Appellee's Affidavit of August 17, 1971, and the Opinion # 40985 of July 19, 1974 all discussed - recievership accounting - , not mortgage accounts. Again Judge Carter's prior reference and understanding is stated in an opposite manner that makes the judicial expression more than difficult to beliefe as 'error'. It repeatedly appears that Judge Carter is seeking reverse his position while not disclosing either fact or motive.

Judge Carter upon his own distortions of his own prior statements arrives on station in the top paragraph of page three. Judge Carter suggests that appellee was perhaps " not reciever" therefore " defendant should not be allowed to profit on the basis of misinformation supplied to the court. " .

Appellant respectfully submits to this court, that the opinion # 42189 of Judge R.L.Carter, USDJ SDNY is an intentionlly false document, entered into the records for the purpose of providing grounds for a reversal of opinion "ultra vires" usurping the authority of this appeals court, on the same grounds as the earlier judgement opinion # 40985. And that therein Judge Carter is guilty of criminal malfeasance defined by USC Title 18, Chapter 13, Sec. 241.

In passing, a comment. This court probably finds my words intemperate. I am desended of the English peerage, African slaves, and Cherokees. I am a Merchant Marine Officer Battle Veteran of WW II and Korea. For years I was denied proper employment or proper resturant service for a meal. The involved property is the result of my hard work and honest effort. It is the government which my life was risked to protect that now seeks to deprive me of my lawful rights and property. Gentlemen I have no respect for your polite, ivy tower fraud, Judge Carter is not God, he is a man, and in my opinion not only a dishonest one, but a stupid one, not fit to wear the robes of a United States District Judge. And, I am the injured party, already hurt too much to keep quiet. I have just begun to scream.

As indicated , prior to the final paragraph of Opinion # 42189 Judge Carter exposed his intentions. In the final paragraph he states that an "Evidentiary hearing" is to be called to determine the "true facts".

The Transcript of that hearing will disclose that Appellee's attorney corrected the judicial misconception as to the existance of "recieversh1p". (see pg 2 lines 15-16.) Judge Carter asked no questions.

Of the transcript, page 11 covers a friendly exchange between Judge Carter and Winston D. Grace - reference agreement - pg 11 lines 11 thru 13. Judge Carter seems to encourage the false statement of existant agreement " In November 1970, Yes Sir". The same witness contradicts his prior testimony in cross-examination pg 36 and 37 specifically pg 37 line 18.

On the transcript - early in the "proceedings" the involved issues are stated on page 26. Appellee's attorney correctly defines both appellant and appellee's position, lines 12 through 19. I.E: Appellant's claim that appellee as reciever "collected or should have collected" certain monies over a period of time; and Appellee's claim that " for some .+. time there was an agreement . . he was specifically authorized and undertook to collect that rent" .

Judge Carter states: lines 7 through 11 " the issue as far as I am concerned, . . is whether as the mortgagee Mr Davenport had satisfied his indebtedness, which is the thing I was led to believe."

((N.B. - on his own erroneous basis the court create's a new issue. It changes later. Also throughout the transcript mortgagor and mortgagee are reversed, whether Judge Carter or the court reporter makes this error is unknown.)

On page 32, Judge Carter again states: " . . the issue that I thought I ruled on last some time ago was that the recieversh1p had been appointed that was entrusted with the management of the property and that you were the owner of the property and had an equitable interest in the property and no accounting had been made by the reciever and that in fact the reciever had collected more rents . . . . " Judge Carter states the correct premise and continues to distort his prior concepts.

On cross-examination of Mr. Grace for appellee by Appellant Davenport, of the transcript pages 45 through page 48 Appellant questions about the recieversh1p preformance and involvement of the other named defendants to the litigation. Mr. Grace's replies indicate his knowledge of payment of money by the Bronx Sherriff to the defendants WATTS. He states that appellee did not collect any rents. He mis-represents that " at this point in time, 1970, United Mutual was not the reciever on this property.

An interchange on page 47, Mr. Dirkins, Esq., states that the tenants were named defendants, but " the purpose . . is not to seek to get moneys from them. . . . not to seek to get moneys from them or a judgement or a mortgage loan. "

Judge Carter's reply is : " I get the point. That dosen't impress me at all. "

NOW AT THIS POINT — The court has been informed that it's original concept that appellee was reciever appointed by the court for the entire period was correct. — The court had been informed that as reciever appellee had not

sought to effect any action of management, or to act in any was as reciever. -- It was a matter of court record that appellee had on the summons asked appointment of a reciever , Mr Grace had testified mentioning the additional court records of appellant's February 1971 motion seeking to have the recievership declared vacant and abandoned and void. It is court record that appellee had opposed. It should be judicial record of Judge Frankel that appellee was ordered to appoint a recievership agent in ten days and so notify the court. It was repeatedly stated by Judge Carter that of concern was the open "Motion seeking an Accounting for the Recievership Funds" . It was the testimony of the appellee-reciever that they had not functioned, not collected, it was their claim that they had depended upon an agreement with appellant made in November of 1970 but that they the appellee-recievers had withheld the letter of authorization that he might be properly empowered to so act.

The positions of the appellant and appellee had been clearly stated by appellee's attorney Mr. Cherot (E.H. pg 26 lines 12 thru 19). The judicial mis-statement as to appellant's "asserting" as to the collection of rent monies, and the amounts of monies involved had been pointed out to the court in the proper reply documents by appellant; which were "Answer to Motion to Reconsider filed 02-21-75", and the " Statement supplementing the Answer .. . , filed 04-23-75". All necessary information to consider the question at hand lies before the court. And yet,

THE INTERCHANGE (transcript E. H. pg 54 line 4 and page 65 line 5. Of particular interest is page 56 line 25, pg 58 line 3, and pg 64 lines 4 thru 6.) about missing rent monies is indicative of the judicial attitude of Judge Carter.

" THE COURT: . . I said that their belief was that you were collecting the rents and that you were acting in their behalf as the person on the property. That is what he has been attempting to say. . . . .
. . If you can show these people did not collect rents during the period of time that you are talking about and didn't apply them to the mortgage and so forth and so on, you have a point. "

Mr. Davenport: " At this point there are some missing moneys."

The Court: " Well you haven't established that. "

AT THIS POINT I SUBMIT that (a) appellee as reciever was responsible for establishing the accounts and thereto it was not appellant's responsibility to establish the presence or absence of the involved monies, and (b) in OPINION # 40985 the court had already ruled on the issue. The question now before the court was one of the court's making, ie: whether appellant could show that monies were missing. Which question was spurious as the court was apparently refusing to accept appellant's sworn statement thereto, and had not required the presence of the defendants-tenants that testimony might be taken from them. JUDGE CARTER APPEARS TO HAVE BEEN SEEKING TO IMPOSE THE IMPOSSIBLE QUESTION.

AND THE COURT'S ADVANCE NOTICE OF JUDGEMENT TO COME (E.H. pg 93, line 5) " . . your cost, Mr. Davenport, . . ."

Appellant obtained an adjournment of proceedings to obtain counsel. The transcript is self explanitory. Judge Carter denied counsel necessary time to examine the records thus forcing counsel to advise appellant to agree to adjournment pending trial. And then after an out of court contact with appellee's

attorney's counsel for appellant felt personally threatened and quit the case.

Appellant sought a series of necessary proceedural actions, (1.) reassignment to a different judge, (2) jury trial, (3) enjoinment of all related questions, (4) and a pre-trial conference that the questions and issues before the court might be clearly defined. Appellant's actions included a letter to the Circuit Judge of this District, The Most Hon. Thurgood Marshall, stating part of the situation and asking removal of Judge Carter from the case.

Judge Carter again demonstrates his biased attitude by refusing to release appellant's attorney until the week before trial, and not having appellant notified until the moment of trial; by refusing to recognize the pro-se motions before the court until the moment of trial and then denying them; by his staff refusing to give appellant any information including the probable date of trial, less than a week before the trial date; by his reference to appellants letter accusing him of improprieties addressed to Thurgood Marshall immediately preceding trial (a copy of that letter is filed of record "Statement of William J. Davenport, July 2, 1975") ; by the inadequate notice time and the court's refusal to permit appellant time to bring witnesses into the court (see trial transcript pg 14, line 18. and the interchange pg 15 lines 2 thru 6 here stated)

Davenport " Your Honor, I have had no time to get witnesses here this morning. I recieved notice much too late last night."

Court. "Fine. If that is so, you are not prepared. "

Further during TRIAL for the first time appellant was allowed to begin a statement in his own defense of record (pg 55 of the trial transcript) but Judge Carter acts (line 20 of pg 59) to limit the statement, accepting no reference to the rent control questions. The cross-comments continue through page 62 (aside - note pg 60 line 16 is incorrectly transcribed as the court instead of Davenport.) where line 19 is Judge Carter stating the trial is an "evidentiary hearing", and he continues to deny entry of appellant's defense upon which the action was before the federal court.

IN FINALITY Judge Carter issued OPINION # 44084 which completely ignores the federal question of entry, the prior dismissal judgement Opinion # 40985 of July 19, 1974, the question of recievership accounts which the court did not examine, and did not ask, mention, or require the plaintiff-reciever-appellee to in any manner define or explain.

I thereto respectfully submit to this appeals court, that herein is shown absent cause for reopening the action in appellee's "Motion To Reconsider". Herein has been shown Judge Carter intruding Judicial mis-statement and misconstruction of the record, and on that legally erroneous basis reopening the proceedings, only to have his errors pointed out by appellee's attorny's. That Judge Carter informed of his error then implied a new issue in the proceedings of an impossible demand for proof improperly placing the burden of proof concerning plaintiff-appellees actions as reciever upon defendant appellant. That Judge Carter denied enjoinment of related questions and permitted and caused the absence of involved parties who were named defendants in the action and who in fact retained in their possession the monies in question during the proceedings. In simple language I submit that Judge Carter pre-intended his judgement, reopened the proceedings solely for the purpose of creating the appearance of proper proceedings, actually failed to do so, and finally issued his intended judgement petulantly intensified in his rage at appellant who openly accused him of his wrongdoing. The proceedings as such were not DUE PROCESS OF LAW or FAIR TRAIL.

POINT FOUR

THE PROCEEDINGS IN THE COURT BELOW, UPON WHICH JUDGEMENT WAS RENDERED, WERE NOT THE QUESTIONS LAWFULLY AND PROPERLY BEFORE THE COURT. AND THE STATED FINDINGS OF THE COURT ARE IN ERROR.

Judge Carter's examination proceedings ignored, and precluded the proper examination of appellee's prior preformance of recievership upon which Judge Carter had previously issued Opinion # 42935 July 19, 1974. The proceeding were predicated upon Judge Carter's mis-construction of the record stated in his Opinion # 42189 of April 4, 1975.

And yet, although the record states appellee asked recievership appointment in the foreclosure summons, which was given to appellee by the district court in Oct. 1970 on appellants concurrent motion. That appellee first agreed that appellant would act as his agent and then withheld the letter of authorization. That appellee four months later opposed voiding of the recievership, and when ordered by the district court to appoint a management agent failed to comply. And that appellee in July 1970 ordered by Judge Motley in the District Court to prepare an Order for judicial signature appointing appellant the management agent of appellee-reciever , appellee did not comply but on the preset review date instead submitted an Affidavit in Opposition to accounting, stating that the recievership accounting would be properly made at the termination of proceedings. Appellee failed to prosecute the litigation for four years. Appellee failed to respond to the orders of the court, or to supply information demanded by the court. Appellee admits failure to act to maintain the involved recievership for a period of almost four years, during which period the property was subject to deterioration and violation proceedings with a resultant $ 97,000.00 judgement; and went into tax En Rem foreclosure proceedings. Judge Carter states " There is no evidence that plaintiff . . collected any rents, and no proof of fraud, neglect or bad faith attributable to plaintiff.

Gentlemen of the appeals court. That was not the question upon which proceedings were re-opened. The question implied in Opinion 42189 of 04-04-75 was whether defendant Davenport had perpetrated a fraud. And there NO FRAUD was shown to justify the final opinion.

The question of recievership accounts which underly the dismissal judgements are from appellant's motion seeking accounting thereto. Which motion was a legal devise to force the 'vacant management' question into judicial concern. The court's action indicated recognition of the responsibility of appellee as reciever. Appellee's Affidavit in Opposition to Accounting indicated recognition of the same responsibility.

Thereto appellee admits no function for the entire period claiming dependance upon appellant, whom he opposed and prevented assignment of authority for action, to act for him.

The situation speaks for itself. Appellant without the backing of the court, and without the backing or assistance of appellee acted to prevent further losses of funds and deterioration of the property. Lacking the necessary authority and denied enjoinment and examination of the cause questions by the district court, his efforts were less than fully adequate.

Appellee as responsible reciever, and Judge Carter of the district court failed to seek to establish the full facts related to the involved totality of

of accounts which were the "RECIEVERSHIP ACCOUNTS" and both acted in such manner as to prevent that accounting being properly and fully examined and determined by the district court during the proceedings.

Judge Carter states as in issue the signatores upon the "agreement document." I have continued, and my wife has continued to deny the signatures. I respectfully submit that the signatures are a forgery. But more important, Judge Carter after preventing cross-examination of the "handwriting expert" made a psychological slip to indicated his intended judgement with his comment about " your costs, Mr. Davenport ", and then in judgement gives weight to the questioned validity while completely ignoring the fact that the contents of the document itself were nowhere near as weighty as the court seeks to assign them credit for being.

The involved document presents an agreement that appellant would seek to act as management agent for "one year" with both parties acribing to certain conditions. An oral agreement similar had admittedly been made. Both agreements were less detailed than the July 1971 order of Judge Motley. Under no stretch of the imagination could the agreement logically be interpeted as superceding the assignment of recieversbip by the court, during the period, to the appellee; which is precisely what Judge Carter has done, and left unstated in the opinion.

In that opinion, derived after proceedings supposedly to determine the handling of monies. Judge Carter fully aware of appellee-plaintiff's failure to prosecute for more than four years, assigned appellee-plaintiff all costs and interest demanded. The court ignores the deterioration of the property engendered by appellee's failure to exercise the recieversbip authority and responsibility, and his refusal to permit appellant to exercise the same authority during the four year pendancy of the litigation. The court below ignores the withholding of rents by the tenant-defendats, and assigns payment approval to tenant-defendant-WATTS for their unlawful claim which precipitated the litigation without permitting exposure or examination of that claim.

Here again I submit that the underlying rent administration action and order was unlawful, maintained by fraudulent allegation to suborn the courts including the district court into denying examination of the records. And that the involved action has been examined in a collateral litigation and declared unconstitutional. (HDA v. CHIP et al, (1975) Civil Court City of N.Y.)

And here again I submit that the original question before the court did not deny the mortgage failure, or appellee's rights. It did question the underlying rent control order, and the action and garnishee by defendants WATTS. And I respectfully submit this was not the question which the court below provided proceedurals for examination.

CONCLUSION

THE HERE PRESENTED SUMMARIZING BRIEF IS EXCESSIVELY LONG AND CONFUSED, AND EVEN SO IT INADEQUATELY DESCRIBES THE DETAIL OF LITIGATION IN QUESTION. THE ONLY CLEAR AND COMPREHENSIBLE FACT IS THAT A CONTINUED TEN YEAR SERIES OF LITIGATION HAS BEEN DISMISSED BY THE COURTS BELOW WITH OPINIONS EXPRESSED AND WITHOUT EXAMINATION OF THE WITNESSES AND RECORDS WHICH UNDERLY THE QUESTIONS. THAT THE FINAL CONSEQUENCE IS A JUDGEMENT AGAINST APPELLANT WHICH DEPRIVES HIM OF HIS REAL PROPERTY AND MAINTAINS OR PERMITS MAINTAINANCE OF JUDGEMENTS IN THE AMOUNT OF ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000.00) AGAINST HIM IN CONSEQUENCE.

APPELLANT HAS SOUGHT THE JUDICIAL OVERVIEW EXAMINATION OF THE COURTS. THE UNITED STATES CONSTITUTION WARRANTEES HIM THE RIGHT TO SUCH EXAMINATION AND OPPORTUNITY TO BE HEARD IN HIS OWN DEFENSE. THE COURTS HAVE DENIED HIM THOSE EXAMINATION OPPORTUNITIES AND THE RESULTANT OPINIONS OF THE COURTS BELOW MAY BE FAULTY AND SHOULD THEREFORE BE PROPERLY RE-EXAMINED, AND UNTIL THEN THE EXISTANT JUDGEMENTS SHOULD BE SET ASIDE.

THEREFORE THIS UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SHOULD SET ASIDE THE JUDGEMENT OF THE DISTRICT COURT IN THE INSTANT LITIGATION, AND ORDER A NEW TRIAL PROCEEDINGS WITH ALL INVOLVED PARTIES AND QUESTIONS AS HEREBELOW NOTED ENJOINED FOR A NEW TRIAL PROCEEDINGS WITH PROPER NOTICE OF ALL QUESTIONS TO ALL PARTIES THAT ALL ISSUES MAY BE LAWFULLY AND RIGHTFULLY EXAMINED AND ADJUDICATED AND SUCH RESPONSIBILITIES , PENALTIES , AND COMPENSATIONS AS MAY BE SHOWN DUE ASSIGNED TO THE PARTIES AS THE COURT MAY DETERMINE LAWFUL. AND FURTHER THAT THIS SHALL BE BEFORE A NEW AND DIFFERENT DISTRICT COURT JUDGE.

THE ACTIONS REQUIRING ENJOINMENT OF ISSUES IF NOT ALL PARTIES ARE:

UNITED MUTUAL LIFE INS. CO. v. DAVENPORT et al	SDNY 70 Civ 3873
DAVENPORT v. BERMAN, et al.	SDNY 68 Civ 4984
DAVENPORT v. ALTMAN, et al.	SDNY 71 Civ 4263
DAVENPORT v. AMARO, et al.	SDNY 74 Civ 3302
DAVENPORT v. GRACE, et. al	SDNY 75 Civ 889
HDA Cty N.Y. v. DAVENPORT	SDNY 74 Civ 5146.

RESPECTFULLY SUBMITTED,

William J. Davenport

William J. Davenport, Pro- Se.
A Defendant - Appellant.

324 Allaire Ave. Leonia, N.J. 07605
(201) 944 1174

The foregoing is of my own knowledge, or information believed by me to be true.

John H Alfke

Sworn to before me this
18th Day of August 1976

JOHN H. ALFKE
NOTARY PUBLIC, State of New York
No. 24-0141452307 8
Qualified in Kings County

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is

the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: .....

STATE OF NEW YORK, COUNTY OF ss.:

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says that
deponent is the in the within action; that deponent has
read the foregoing and knows the contents thereof; that
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.:

CORPORATE VERIFICATION

, being duly sworn, deposes and says that deponent is the
of the corporation
named in the within action; that deponent has read the foregoing
and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because
is a corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

AFFIDAVIT OF SERVICE BY MAIL

William J. Davenport,
being duly sworn, deposes and says, that deponent is ~~not~~ a party to the action, is over 18 years of age and resides at
324 Allaire Ave. Leonia, N.J. 07605

That on the 16th day of August 1976 deponent served the within Appellant's Brief
upon PATERSON MICHAEL DINKINS & JONES Attorneys for Appellee in this Action
at 888 Seventh Ave. New York, N.Y. 10019

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York

Sworn to before me, this 16th day of August 19 76

William J. Davenport

William J. Davenport

NY

16 August 1976 at No.

JOHN K. ALFAS
NOTARY PUBLIC, State of New York
No. 24-0141352[illegible]
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1978